

## **AGREEMENT**

*(Construction of Concrete Pad for Future Building at the Washington County Regional Park)*

This Agreement is made and entered into effective on the date set forth below, by and between the \_\_\_\_\_, whose principal business address is \_\_\_\_\_, (the "Contractor") and **Washington County**, (the "County").

## **RECITALS**

WHEREAS, County is in need of the construction of a concrete pad to be used for a future building at the Washington County Regional Park/Fair Grounds, located at 5500 West 700 South, Hurricane, Utah, hereinafter referred to as the "Project"; and

WHEREAS, Contractor is the lowest responsible bidder for the Project and has the ability and expertise to perform the necessary labor to construct the Project.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

## **SPECIFIC TERMS**

1. **Services.** Contractor shall supply the materials and labor necessary to construct the Project for the County.
2. **Documents and Specifications.** The Project shall be constructed pursuant to the specifications set forth in the Site Plan, a copy of which is attached hereto as Exhibit "A".
  - a. **Contract Price and Payment Schedule.** The County shall pay Contractor the amount of \$\_\_\_\_\_ for the construction of the Project. Contractor shall be paid within fourteen (14) days of when the Project has been completed by the Contractor and the Project has been inspected and accepted by the County, in the County's sole discretion.

**3. Completion Time.** The pad must be completed and cured prior to August 12, 2009. The work shall commence on or before July 13, 2009, and the pad must be poured prior to July 23, 2009, to allow sufficient time for the pad to cure. Any time lost by reason of changes to the agreement or changes in the plans by the County, or strikes or weather conditions not reasonably anticipated, shall be added to the specified time for completion. A claim for an increase in time for the performance of the contract shall be made within two (2) days after the event that gives rise to the claim.

**4. County's Responsibility.** The County shall provide all staking, testing and inspections needed.

**5. Permits.** Contractor shall obtain all building permits, licenses, building inspections and approvals required by law and shall pay for said permits.

**6. Change Orders.** The County may order changes in the work and materials to be provided by Contractor pursuant to this Agreement, but only upon prior written approval by the County. All requests for a change order shall be submitted to Ron Whitehead and Ron Whitehead shall have sole discretion of whether to grant or not grant the requested change.

**7. Insurance and Risk Management.** Contractor shall obtain all workers' compensation required by law, and shall obtain a commercial general liability insurance and comprehensive liability insurance policy, in the minimum amount of \$1,000,000.00, naming the County as an

additional named insured under said policy, to protect the County for damages due to bodily injury, including death, and for damages to property that may arise out of and during operations under this Agreement. Contractor shall produce a certificate of insurance to the County prior to commencing work on the Project that satisfies Contractor requirements set forth in this paragraph.

**8. Access to the Property Site.** The County shall at all times have access to the property where the Project is being constructed and the right to inspect the work in the presence of Contractor.

**9. Inspection, Acceptance, Final Payment and Possession.** At the final inspection, County shall give Contractor a signed and dated list that identifies any deficiencies in the quality of the work or materials. Contractor shall correct said deficiencies before County shall pay Contractor the final installment, or, in the alternative, County shall withhold an amount sufficient to correct the deficiencies, plus an additional fifty percent (50%), and pay the net amount to Contractor. The amount withheld shall be determined solely by the County. Once Contractor corrects the deficiencies, County shall release the amount withheld to Contractor. After the defects have been corrected to the satisfaction of the County, the County shall sign a certificate of acceptance. In the event Contractor fails to correct the deficiencies within thirty (30) days, County may, at its option, correct the deficiencies and deduct the amount necessary to correct the

deficiencies and shall refund the balance of said funds, if any, to Contractor. Contractor shall provide County with an affidavit stating that all materials and services for which a lien could be filed have been paid and shall obtain a waiver of claims from all suppliers and subcontractors who supplied materials and/or labor to the Project.

### **GENERAL TERMS**

- 11. Utah Law to govern.** This Agreement has been drawn and executed in the State of Utah. All questions concerning the meaning and intention of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah.
- 12. Recitals.** The Recitals contained in this Agreement are incorporated into the Agreement.
- 13. Integration.** All agreements heretofore made in the negotiation and preparation of this Agreement between the parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.
- 14. Number and gender.** The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

- 15. Paragraph headings.** The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.
- 16. Partial validity.** If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:
- a. The remainder of this agreement shall be considered valid and operative, and,
  - b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.
- 17. Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving party.
- 18. Necessary Acts and Cooperation.** The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.
- 19. Ambiguities.** This agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that ‘ambiguities shall be construed against the draftsman’ shall have no application to this agreement.
- 20. No Third Party Beneficiaries.** This Agreement is not intended to be a third-party

beneficiary contract for the benefit of any third parties, including but not limited to any customer of any party, and no such persons shall have any cause of action against any party for any breach or default by any party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the parties' right to modify or renew this Agreement at any time or in any manner.

**21. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**22. Rights and Remedies.** The parties shall have all rights and remedies provided under applicable federal or state law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the County.

**23. Laws and Regulations.** Any and all services provided hereunder will comply fully with all applicable Federal and State and local laws and regulations.

**24. Indemnity Clause.** Each party agrees to indemnify, save harmless, and release the other

party and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the negligence of the that party's officers, agents, volunteers, or employees, but not for claims arising from the other party's sole negligence.

**25. Assignment.** This Agreement shall not be assigned by either party.

**26. Attorney's Fees and Costs.** In the event of a breach of any of the terms contained herein, the breaching party shall pay the non-breaching party reasonable attorney's fees and costs associated with enforcing the Agreement.

**27. Employing Workers in Violation of 8 USC § 1324a Prohibited.** By submitting a proposal and/or signing this contract, Contractor (a subcontractor of Contractor, contract employee, staffing agency, trade union, or any contractor regardless of tier) certifies that it does not and will not, during the performance of this contract, knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. Contractor agrees to produce, at the County's request, such documents which are required to verify compliance with applicable State and Federal laws. If Contractor knowingly employs workers in violation of 8 USC § 1324a, such violation shall be cause of unilateral cancellation of the contract between Contractor and the County. In the event this contract is terminated due to violation of 8 USC § 1324a by Contractor or subcontractors of Contractor, Contractor shall be liable for any and all costs

associated with such termination, including, but not limited to, any damages incurred by the County as well as attorney fees. Contractor acknowledges that it has previously filled out and has complied with the contents of a Certification of Legal Work Status, which was submitted by the Contractor to the County as part of its bid package.

**WASHINGTON COUNTY**

By: \_\_\_\_\_  
James J. Eardley, Chair  
Washington County Commission

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

[\_\_\_\_\_]

By \_\_\_\_\_

Its \_\_\_\_\_

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.